Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning a Review of the	)	CC Docket No. 02-39
Equal Access and Nondiscrimination Obligations	)	
Applicable to Local Exchange Carriers	)	

COMMENTS OF ALASKA COMMUNICATION SYSTEMS, INC.

Alaska Communication Systems Group, Inc. ("ACS") submits these comments in response to the Federal Communications Commission's request to refresh the record in its review of equal access and nondiscrimination obligations applicable to local exchange carriers.[1]

I. INTRODUCTION

The Commission's inquiry examines "the continued importance of the equal access and nondiscrimination obligations of section 251(g) of the Communications Act of 1934"[2] in light of its goals of facilitating competition, encouraging deregulation and harmonizing the regulatory burdens and benefits experienced by carriers.[3] The Commission seeks comment on the current state of equal access and nondiscrimination obligations, any changes necessary to these obligations, and the appropriate process for changing or eliminating existing obligations.

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[1] *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Public Notice: Parties Asked to Refresh Record Regarding Review of Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers, CC Docket 02-39 (rel. Mar. 7, 2007) ("Public Notice"); *see also Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Notice of Inquiry, CC Docket 02-39 (rel. Feb. 28, 2002) ("Notice of Inquiry").

[2] Notice of Inquiry ¶ 1.

[3] *E.g., id.* at ¶ 17.

In order to achieve the Communication Act's pro-competitive and deregulatory goals, the Commission should recognize that competition among carriers has obviated the need for equal access obligations on local exchange carriers (LECs). Equal access and nondiscrimination obligations, enacted more than 20 years ago to promote interexchange service competition, are no longer relevant due to the development of a fully competitive market. Moreover, the bundling of local and long-distance services by many providers makes equal access and nondiscrimination counter-productive. Customers desire one-stop shopping for their telecommunications needs. They should be able to get comparable bundles from a variety of carriers. In addition, the Communications Act contains other nondiscrimination provisions that apply to all LECs, making section 251(g) redundant. In today's telecommunications market, it is illogical to impose different obligations on carriers based solely on their status as Bell Operating Companies (BOCs), independent incumbent local exchange carriers (ILECs), competitive local exchange carriers (CLECs), and CMRS carriers. All providers of local exchange services ought to be similarly situated in the current interexchange market. The Commission can, and should, eliminate enforcement of equal access obligations.

II. EQUAL ACCESS REQUIREMENTS ARE NOT NECESSARY IN TODAY'S COMPETITIVE ENVIRONMENT

Section 251(g)'s obligations are irrelevant in the current competitive marketplace and superfluous in light of the Communication Act's other provisions requiring equal access and nondiscrimination. Initially, the equal access and nondiscrimination requirements were narrowly drawn to prevent discrimination against new carriers attempting to compete against AT&T in the interexchange market. These obligations later were applied to all LECs by the FCC, and then

codified in section 251(g).[4] In the intervening years, the Commission has declared AT&T non-dominant and the CMRS market to be robustly competitive.[5] Moreover, CMRS competition is the primary reason for line loss by ILECs today.[6] Section 251(g)'s obligations are outdated and now act only as impediments to the Commission's goals of competition and deregulation.

The telecommunications marketplace has undergone significant changes since the initial enactment of equal access and nondiscrimination requirements in the 1980s. As the Commission notes, there are no longer any dominant providers in the domestic interexchange market.[7] Most local markets are now served by multiple CMRS carriers as well as the ILEC and various types of CLECs (including VoIP providers). These providers are engaged in fierce competition using marketing campaigns that successfully target customers, and using bundles of services designed to provide customers added value. Consumers understand that they have a choice in interexchange service providers and readily exercise this choice.

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[4] Section 251(g) provides: "[E]ach local carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission."

[5] *Motion of AT&T Corp. to Be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Eighth Report, 18 FCC Rcd 14783, 14787 ¶ 5 (2003).

[6] *See, e.g., In the Matter of AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5716 ¶ 98 (2007) (noting the Commission's previous findings that "consumers are switching minutes of long distance usage from wireline to mobile wireless services").

[7] Notice of Inquiry ¶ 11.

For example, the Commission recently acknowledged the extensive competition in Anchorage, Alaska when granting ACS unbundling relief pursuant to section 10.[8] As in the *Qwest Omaha Order*, the Commission granted forbearance based on the extensive level of facilities-based competition in the market.[9] The leading CLEC, General Communication, Inc. ("GCI"), now provides local exchange and exchange access service to approximately half of the Anchorage local exchange market and is also one of the two (with AT&T Alascom) large long-distance carriers in the market.[10] The intense local exchange competition ensures that carriers cannot effectively discriminate in favor of long-distance providers. Given GCI's 50% market share and extensive print, radio, and television marketing campaigns, it is virtually impossible that any Anchorage resident is unaware of GCI's long-distance services.

Consequently, any requirement that LECs such as ACS must list their competing long-distance providers when offering service to new customers is unnecessary. Presubscription is now the norm in Anchorage. Reading lists of competitors to customers is no longer necessary to ensure competition and is simply a waste of LECs' resources and the consumers' time. Moreover, it puts the ILEC at a distinct disadvantage if none of its competitors are reciprocating.[11]

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[8] *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communication Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, WC Docket 05-281 ¶¶ 20, 49 (Jan. 30, 2007) ("ACS Forbearance Order").

[9] *Id.* at ¶¶ 20, 49. This finding by the Commission directly contradicts GCI's argument that ACS and other ILECs retain "bottleneck control" over local facilities. *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Comments of General Communication, Inc., CC Docket No. 02-39, at 1, 8-9 (filed May 10, 2002) ("GCI Comments").

[10] ACS Forbearance Order ¶ 28 n.84.

[11] *See* GCI Comments 7 (stating that presubscription regulations apply only to BOCs and ILECs).

The marketplace has undergone another change which obviates the need for the enforcement of equal access obligations: local service and long-distance markets are no longer separate or distinct. As the Commission recognizes, standalone long-distance service has been replaced by carrier bundles of local and long-distance services.[12] Both CLECs and wireless carriers—most of whom operate solely by bundled plans—are now competing effectively as simultaneous local and long-distance service providers. The once clear division between local and long-distance services no longer exists. Competition does not depend on local-service providers remaining unaffiliated with long-distance carriers. In fact, consumers benefit from greater choice and lower prices when carriers are able to provide discounts for signing up with an affiliate. The Commission should eliminate equal access requirements in recognition of consumers' ability to comparison shop for competitive bundled services on both their wireline and wireless phones.

In addition, other provisions in the Communication Act require nondiscrimination, making section 251(g) superfluous. As common carriers, LECs must comply with the nondiscrimination provisions of sections 201, 202, and 251(a) and (b). Section 251(b)(3) requires all local exchange carriers to interconnect with interexchange carriers and provide dialing parity. The Commission has ample authority to ensure that common carriers are not discriminating in their charges and practices or services. Given these regulations, and the current intensity of competition, there is no danger that LECs could effectively discriminate in favor of certain long-distance carriers if the Commission forbears from enforcing equal access requirements. Rules of general applicability have superseded section 251(g)'s requirements and the Commission no longer needs to enforce this provision.

[12] Public Notice 1.

III. REGULATORY PARITY IS NECESSARY IN ADMINISTERING NONDISCRIMINATION OBLIGATIONS

The Commission's goal of regulatory parity would be accomplished most effectively by eliminating equal access obligations. Section 251(g) is not enforced equally as to all providers of local exchange telecommunications services, such as CMRS providers. There is no longer any reason or justification for administering equal access and nondiscrimination obligations based on a carrier's historical status.

In the current competitive and regulatory landscape, all LECs are similarly situated with respect to long-distance services and should therefore be treated identically for equal access purposes. All telecommunications carriers interconnect with other carriers. All LECs enable customers to reach other service providers. All LECs must provide dialing parity. ILECs do not have a larger amount of "control" over interexchange market access than do CLECs or CMRS carriers. For example, GCI by its own admission has facilities that pass 85% of Alaskan households.[13] Given the robust retail competition in Anchorage, there is no reason for only ACS to comply with equal access requirements, such as reading customers a list of ACS's long-distance competitors.[14] To the contrary, eliminating this requirement would enable greater competition among all carriers in the market through regulatory parity. There is no longer any justification for regulating carriers asymmetrically.

IV. THE COMMISSION MAY USE THIS PROCEEDING TO CHANGE OR ELIMINATE SECTION 251(G)'S REQUIREMENTS

As a practical matter, the Commission can eliminate existing equal access and nondiscrimination requirements in this proceeding and need not conduct a forbearance analysis

[13] GCI Comments 2.

[14] ACS Forbearance Order ¶ 28 n.84.

pursuant to section 10. Section 251(g) is an interim provision that effectively preserves FCC rules that were in effect when the 1996 Act was adopted; it remains in effect only until its obligations are "explicitly superseded by regulations prescribed by the Commission." Unlike the Act's other obligations, section 251(g) does not contemplate the Commission forbearing as a prerequisite to ceasing enforcement of the provision. Congress recognized the potential conflict between historical obligations and the realities of today's competitive marketplace and specifically granted the Commission authority to supersede existing obligations. Thus, the Commission can simply, upon its own order in this proceeding, either change or terminate the provisions addressed by section 251(g).

In the interests of promoting competition and regulatory parity, the Commission should issue an order finding that any equal access requirements preserved through section 251(g) are no longer necessary and therefore are rescinded.

Respectfully submitted,

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